# EVIDENCE EXAMINATION SPRING SEMESTER 2003 SECTION A. PROF. T. J. REED

Assumptions: All events take place in the state of Camelot. Camelot has adopted the Federal Rules of Evidence. The Federal Rules of Evidence apply to your case.

Instructions: You may refer to your pocket edition of the Federal Rules of Evidence, which you were permitted to freely annotate during the semester. You may not bring in any other outside materials.

Your Assignment: Your examination consists of a common fact pattern and four essay questions about the fact pattern. Answer every part of every question to the best of your ability.

# COMMON FACT PATTERN IN THE SUPERIOR COURT OF THE STATE OF CAMELOT FOR NORTHUMBERLAND COUNTY

EWELL PORTER,	)	
Plaintifl	f,)	
	)	
VS.	)	No. C-02-3030
	)	
ANTHONY S. DUGAN	)	
d/b/a GREAT REBELLION	)	
ARTIFACTS,	)	
Defendan	t.)	

#### SYNOPSIS OF FACTS

On July 20, 2000, Marjorie Sims, a descendant of Col. Lafayette Baker, head of President Lincoln's Civil War National Detective Bureau who investigated the Lincoln Assassination in 1865, was cleaning out the attic of her family home on Spruce St. in Philadelphia. She discovered a pile of old papers in a trunk. Among those was a letter to the Editor of the National Intelligencer from John Wilkes Booth dated April 13, 1865. The letter, signed "J.W. Booth" stated that the Lincoln assassination was part of a Confederate plan involving Capt. Harney, an explosives expert, Col. John S. Mosby, Confederate Secretary of State Benjamin and President Jefferson Davis. Booth said he was assigned to kill Lincoln only if Capt. Harney, escorted by Col Mosby's rangers did not get through Federal lines and blow up the White House on April 12. When Harney, was captured by Federal Cavalry, the letter writer said that he was honor bound to carry out the assassination as a Confederate agent acting under orders from Jefferson Davis.

According to Dugan, the owner of Great Rebellion Artifacts in Concord, Camelot, Ms. Sims contacted him because she had heard that Great Rebellion was the leading dealer in Civil War artifacts and documents. Dugan, the owner of Great Rebellion, examined the letter and pronounced it genuine. He held a press conference and exhibited the letter on television.

Ewell Porter of Augusta, a multimillionaire collector of Civil War artifacts contacted Dugan about buying the letter. Dugan submitted a certificate of authenticity showing the history of the letter and an affidavit from Prof. Edgar Edmonds of Drexel University who verified that the ink and paper were of the period 1860-69. Dugan allowed Porter to examine the document microscopically, and without consulting anyone else, Porter paid Dugan's asking price of \$1,000,000 and took the letter to his mansion for further conservation on February 12, 2001.

Two months later, Porter attempted to return the letter on the ground that it was a fake. Dugan refused to take the item back, and insisted it was authentic. Porter then filed a civil action to recover \$1,000,000 from Dugan on grounds of common law fraud, and for \$10,000,000 in punitive damages.

During a jury trial before Hon. Seabrook Christian in Northumberland Superior Court, the following incidents occurred:

## **QUESTION ONE: 40 POINTS**

Plaintiff called Sigmund Sorg in its case in chief. Sorge is an appraiser and dealer in autographs are rare documents whose website is <a href="www.oldocs.com">www.oldocs.com</a>. Sorge testified that Ms. Sims contacted him by e-mail in January, 2002.

# **QUESTIONS BY PLAINTIFF'S COUNSEL:**

- Q What is your e-mail address?
- A SSorg@ antiques.com
- Q What was Ms. Sims' e-mail address?
- A Sunny23@tao.com
- Q Did you receive an e-mail on January 2, 2000 from Sunny23@tao.com?
- A Yes
- Q Did you do anything as a result of that e-mail?
- A Yes. I replied to it
- Q What did you do with the e-mail?
- A I printed it out then erased it from my e-mail account
- Q I show you Exhibit 5 for identification: what is it
- A The paper copy I printed out of that e-mail

**DEFENSE COUNSEL: Objection** 

If introduced the print of the e-mail from Sunny23@tao.com reads: "I have a copy of a letter from John Wilkes Booth to the National Intelligencer, that was prepared by one of Col. Lafayette Baker's military orderlies from the original and I intend to sell it to a dealer. Are you interest & will you give me an appraisal?."

Sorge also has a paper copy of his reply which read as follows: "Will appraise for a \$200 fee; I doubt

that your copy is anything other than a 20th century fake."

## YOUR TASK:

- A. What objections will defense counsel make to admission of the e-mail to Sorge?
- B. How will plaintiff's counsel respond to those objections?
- C. Can an e-mail be authenticated? By the recipient?

# B. Admission by adoption

## **QUESTION TWO: 30 POINTS**

Plaintiff called Arlene Adams as an expert in questioned document examination. Adams testified that she is a certified member of the American Society of Questioned Documents Examiners, having attended a six weeks course in questioned documents examination techniques given by the U.S. FBI Academy, Quantico, Virginia in 1988. She has testified in 122 civil and criminal cases applying her methodology to determining the identity of questioned documents, and has assisted in identifying questioned documents for antique dealers. Adams most famous case of identification was that of authenticating a letter sent by Thomas Jefferson to a Cecil County, Maryland school in 1801.

According to Adams' testimony, the premises underlying handwriting examination and identification are:

- (1) "No two writers share the same combination of handwriting characteristics" and
- (2) "Each writer has a range of variation centered within his/ her basic writing habits."

A proper examination requires sufficient samples of comparable "questioned" and "known" handwriting that are naturally executed. If adequate samples are available, an examiner conducts a side-by-side comparison, including a visual and a microscopic study. The comparison made is of several handwriting features such as style, smoothness, size relationships, slant, spacing, curvature, angularity, punctuation, etc. Similarities and differences in various features have varying levels of significance, and the latter influence the conclusion that is drawn.

After the examination, an opinion is expressed on a nine-point scale: "identification", "strong probability [of identification]", "probable", "indications", "no conclusion", "indications did not", "probably did not", "strong probability did not" and "elimination."

Adams had access to 22 known examples of John Wilkes Booth's handwriting for comparison purposes.

# DEFENSE COUNSEL: I object.

Defense counsel conducted a brief voir dire of Ms. Adams' on her qualifications. She admitted that the method she had described was originated by Albert S. Osborn in the 1880's and published in his Questioned Documents in 1910. Numerous articles have been published since 1910 on the method and technique of identification, but no studies have ever been produced showing empirical support for propositions (1) and (2) since Osborn's 1910 book. The known error rate is 6% for false

positive and 12% for false negative identifications. The methods of questioned document examiners have been generally accepted by the courts in other jurisdictions since 1910.

If permitted to testify, Adams will state that in her opinion the National Intelligencer Letter was not written by John Wilkes Booth.

#### YOUR TASK:

- A. What objections will defense counsel make to Adam's testimony?
- B. What will plaintiff's counsel contend in opposition?
- C How should the court rule and why?

# **QUESTION THREE: 16 POINTS**

After the plaintiff rested, defendant called Dr. Ray Neff of Indiana State University, Terre Haute, IN, a Ph.D. in forensic analysis, who was accepted as an expert by the court. Dr. Neff testified that the paper and ink were contemporary 1860's materials and he offered a C14 isotope date of 1866 plus or minus 2 years for the document. Neff also said that microscopic comparison of the National Intelligencer handwriting with two known examples of Booth's handwriting showed that all three were written with the same type of steel pen.

Anthony Dugan then took the stand in his own behalf and testified that he acquired the National Intelligencer letter for \$200,000 from Ms. Sims, and appraised its value in excess of \$1,500,000. He denied that the letter was a fake. On cross-examination, the following occurred:

#### CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL:

- Q Mr. Dugan, you've been in trouble with the law, haven't you?
- A I have no idea what you are talking about?
- Q In 1997, you were arrested and charged with receiving stolen property, i.e., a Civil War cannon that had been stolen from a cemetery in Pennsylvania, weren't you?

DEFENSE COUNSEL: Objection, move to strike the question as improper If permitted to answer, Dugan would have admitted that he possessed the stolen cannon, and the fact of his the arrest for possessing the stolen cannon, but would have added that all charges were dropped when he returned the cannon to the cemetery.

#### YOUR TASK:

- A. What objection or objections will defense counsel make to the question and answer?
- B. What response will plaintiff's counsel make?
- C. How should the judge rule and why?

## **QUESTION FOUR: 18 POINTS**

Later in Dugan's cross-examination:

# QUESTIONS BY PLAINTIFF'S COUNSEL

- Q Mr. Dugan, you're involved in litigation in Pennsylvania, are you not?
- A Yes.
- Q And that litigation involves Ms. Sims and the National Intelligencer letter, doesn't it?
- A Yes
- Q That litigation is in the Philadelphia Court of Common Pleas, isn't it?
- A Yes.
- Q You signed a verified complaint on March 16, 2002, in that case, didn't you?
- A Yes.

DEFENSE COUNSEL: Objection.

If permitted to put the next question, plaintiff's counsel would have said:

- Q And in that verified complaint, you alleged in paragraph 12 of Count II for Fraud the following: [counsel reads from complaint]
- 12. The said defendant knew that said letter was not genuine and well knowing the same to be a forgery and fake, represented to said plaintiff that the same was true and genuine, with intent to deceive said plaintiff into purchasing said letter?

The witness would have answered "Yes."

### YOUR TASK:

- A. What objection or objections will defense counsel make to the question and answer?
- B. What response will plaintiff's counsel make?
- C. How should the judge rule and why?

# **ANSWER PROGRAM**

## **EVIDENCE SECTION A SPRING 2003**

Examination No	
TOTAL POINTS: 104	Your Score:
QUESTION ONE: TOTAL POINTS: 40	Your Score:
A. WHAT OBJECTIONS WILL DEFENSE COUNSEL MAKE	TO ADMISSION OF THE E-MAIL?
Total Points: 10	Your Score:
1 Irrelevant. 2 Points	Your Score:
Exhibit 5 for Identification, an e-mail from Ms. Sims to of a"copy of a letter from John Wilkes Booth to the Natio suit because it proves nothing at issue.	——————————————————————————————————————
2 Lack of Authentication. 2 Points	Your Score:
Assuming that there is some relevance to Exhibit 5 for authenticated by a witness or witnesses competent to show be: an acknowledgment by Ms. Sims that the J.W. Booth I handwriting.	w that the e-mail is what it purports to
3 Not the Best Evidence. 2 Points	Your Score:
Further, Exhibit 5 for Identification is not the original forward to explain the absence of the original e-mail except	
4 Hearsay. 2 Points	Your Score:
The e-mail is an out of court statement by Ms. Sims t matter contained. It is hearsay and inadmissible.	hat is admitted for the truth of the
5. Probative Value v. Prejudice.2 Points	Your Score:

Even if the court finds the exhibit marginally relevant to the defendant's knowledge that the Exhibit was not genuine, the statement contained in the e-mail is of very low probative value and is greatly exceeded by prejudice to the defendant, confusion of the issues and waste of time. It proves the state of mind of the declarant and a future act, i.e offering a spurious document to defendant, and creates great prejudice because the originator was the finder of the letter.

B. How WILL PLAINTIFF'S COUNSEL RESPOND TO Total Points: 12	THESE OBJECTIONS? Your Score:
1 Irrelevant. 2 Points	Your Score:
Exhibit 5 for Identification is relevant to prove the letter was not authentic when she later sold it to defen prove that defendant acquired the letter with knowledge.	dant, and is circumstantially relevant to
2 Lack of Authentication. 2 Points	Your Score:
Sorge is a competent sponsoring witness to auther eceived it from a known e-mail sender who happened he printed the paper copy from his computer. Third, he exhibit has been authenticated.	to have Ms. Sims' e-mail address. Second
3 Not the Best Evidence. 2 Points	Your Score:
Sorge erased the e-mail after he down-loaded and e-mails every day. The paper is an original under. R. 1 1003	
4 Hearsay. 4 Points	Your Score:
The e-mail is an out of court statement by Ms. Si matter contained. It is hearsay, but it is a declaration a the J.W. Booth letter from seven figures to the low for witness. It is admissible as a declaration of her mental under the general exception to the hearsay rule, Rule 8	gainst her interest. It reduces the value of ur figures. However, she is available as a state to prove a future act, or alternatively
5. Probative Value v. Prejudice. 2 Points	Your Score:
The Exhibit has major probative value since the so Ms. Sims, the declarant. What she knew arguably was prejudice to the defendant is low, the issues are not co proving this exhibit and submitting it to the jury.	s known by defendant. The amount of
C. How will the Court Rule and Why? Total Points: 18	Your Score:
1 Irrelevant. 2 Points	Your Score:

Exhibit 5 for Identification tends to prove that defendant's source for the "John Wilkes Booth

to the National Intelligencer" knew the instrument was not genuine, which is circumstantial evidence that defendant also knew that it was not genuine when he sold it to plaintiff. Since this is a case where scienter is an issue, the exhibit is relevant.

2 Lack of Authentication, 4 Points	Your Score:
Lack of Authentication. 4 Points	rour score.

ALTERNATIVE ONE: Sorge is a competent sponsoring witness for Exhibit 5 for Identification. Rule 901(b)(2) permits any document to be authenticated by lay opinion based on comparison with a known example of signature. The e-mail address of Ms. Sims is just as much a signature as her handwritten signature. Therefore, the exhibit is authentic.

ALTERNATIVE TWO: Sorge is not competent to authenticate Exhibit 5 for Identification. The proprietor of the ISP that supplies the e-mail server to Ms. Sims should be called and a proper foundation laid for admission of the e-mail as a business record of the ISP provider.

3	Not	the Re	st Evidence	2 Points	
_	TIOL	THE DE	or Transfer		

ALTERNATIVE ONE: Since there is no genuine issue relating to authenticity, Exhibit 5 for Identification is admissible as a duplicate of the original electronic message that was erased.

ALTERNATIVE TWO: Since authentication of Exhibit 5 for Identification is a serious issue in the case, the paper print-out is insufficient evidence of the contents of the original electronic message. There should be a sponsoring witness from the ISP service to identify the original and compare this paper copy with the original, and absent that type of authentication, the e-mail is not qualified as the best evidence,

4 Hearsa	y. 6]	Points
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Vour	Score:	
YOUT	Score:	

Exhibit 5 for Identification is hearsay.. It is not admissible as a declaration against interest because Ms. Sims is available as a witness.

ALTERNATIVE ONE: The Exhibit is a declaration of Ms. Sims' mental state pointing toward a future act, i.e. selling the copy to defendant. It is circumstantial proof that she later did sell it to defendant. Therefore it is admissible under R. 803(3). See Mutual Life Ins. Co v. Hillmon. U.S. (1893).

ALTERNATIVE TWO: The Exhibit does not meet the foundational standards for a declaration of mental state to prove a future act, especially since the act is equivocal, i.e. sell to Sorge or to Dugan. However, it is the best source of the information available (that Sims knew she had a copy of the original before she sold the Exhibit to defendant) and is circumstantially trustworthy because it was sent in the ordinary course of business between an owner and a dealer in antiques, and the interest of substantial justice requires its admission.

ALTERNATIVE THREE: The Exhibit does not meet the foundational standards for a declaration of mental state to prove a future act. At any rate the future act, sale by Sims to Dugan, has already been proved by admission of the parties. It does not meet the test for admissibility under R. 807, because Ms. Sims is the best source of her knowledge and of defendant's knowledge. The exhibit should be excluded.

Your Score: \_

5. Probative Value v. Prejudice. 4 Points

ALTERNATIVE ONE: The Exhibit has low probative Sims knowledge that the Exhibit was a copy, and defendant circumstantial. Second, the e-mail tends to overpersuade the may discount the value of evidence showing defendant's according to the defendant will exceed the probative value knowledge. It should be excluded.	t's knowledge is weak and he jury that sees it in so far as the jury stual lack of knowledge. The amount
ALTERNATIVE TWO: The Exhibit has some probatican infer that if Ms. Sims knew the letter was not genuine, exhibited it on television. The amount of unfair prejudice genuineness of the document is the central issue in the case of evidence showing defendant's actual lack of knowledge defendant will not exceed the probative value of the exhibit be admitted.	then defendant also knew it when he to defendant is nil, since the  The jury will not discount the value The amount of prejudice to the
QUESTION TWO: TOTAL POINTS 30	Your Score:
A. WHAT OBJECTIONS WILL DEFENSE COUNSEL MAKE TO Total Points: 8	O ADAMS' TESTIMONY? Your Score:
Underlying Scientific Process is Invalid     Points	Your Score:
The underlying scientific principles behind questioned scientific principles that have never been validated by any ralse negative and positive identifications is too high to just	esearcher, and the known error rate for
2. Insufficient Number of Genuine Samples 4 Points	Your Score:
A comparison based on only 22 known examples of Joinsufficient to permit a positive identification and the probability	ohn Wilkes Booth's handwriting is ative value of such identification is

B. WHAT WILL PLAINTIFF'S COUNSEL CONTEND IN OPPOSITION?

greatly outweighed by prejudice to the opponent, waste of time and confusion of the issues.

Total Points:6	Your Score:
<ol> <li>Underlying Scientific Process is Valid</li> <li>Points</li> </ol>	Your Score:
The underlying scientific principles behind questic accepted by courts around the United States, and have The case law since Daubert v. Merrell Dow Pharmace opinion evidence from non-scientific principles that has See, e.g., see <i>United States v. Starzecpyzel</i> , 880 F. Su	e been accepted for more than 100 years. uticals, Inc. supports admissibility of expert ave never been validated by any researcher.
<ul><li>2. Insufficient Number of Genuine Samples</li><li>2 Points</li></ul>	Your Score:
A comparison based on 22 known examples of Jo to permit a positive identification. The probative value unfair prejudice to the opponent, waste of time and co	of such identification is greater than any
C. How should the court rule and why? Total Points: 16	Your Score:
<ol> <li>Underlying Scientific Process is Valid</li> <li>Points</li> </ol>	Your Score:

ALTERNATIVE ONE: The underlying scientific principles behind questioned document examination are generally accepted by courts around the United States, and have been accepted for more than 100 years. See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The same considerations that apply to scientific testimony also apply to the reliability of technical expertise such as questioned documents examination; Kumho Tire, Inc., v. Carmichael, 526 U.S. 137 (1999). The validity of expert opinion evidence on questioned documents based on the non-identity of individual handwriting and h to justify use of such information in a trial. Further, although general acceptance is only one of the indicia of reliability suggested by Daubert, it is the best indicia of reliabilty. The known error rate is not high enough to invalidate the process of identification by comparison with known examples of the handwriting of the purported author. Although no one since Osborn has published on the exact topic, i.e., reliability of the methodology of the questioned document examiner, widespread approval by the courts justifies its admissibility. For cases favoring admissibility of questioned documents examiners based on longtime acceptance and a finding that such expertize is outside the scope of Daubert, see United States v. Starzecpyzel, 880 F. Supp. 1027 (S.D.N. Y. 1995); United States v. Jones, 107 F.3d 1147 (6<sup>th</sup> Cir. 1997) (Note: at least one district court has rejected an identification of handwriting by a questioned document examiner as not supported by sufficient scientific evidence to b e reliable under the circumstances of the task in the case. See United States v. Hines, 55 F. Supp.2d 62 (D. Mass. 1999)

ALTERNATIVE TWO: The principles of the questioned document examiner are not sustained by competent scientific evidence. The utter lack of an empirical basis for the comparison of known writing to unknown writing and the two principles of questioned document examination show that the practice is far removed from scientific or technical reliability. Since there are no studies testing the underlying scientific basis of the assumed first principal "no two people write in exactly the same way" and its corollary "variations in handwriting can be detected by subjective non-quantitative analysis, the court rejects the use of such evidence. For a judicial decision rejecting questioned document expert evidence as unsupported by scientific findings, see *United States v. Fujii*, 152 F. Supp.2d 939 (N.D. Ill. 2000)

Your Score:

2. Insufficient Number of Genuine Samples

4 Points

Assuming that the underlying scientific process is accep	otable:
ALTERNATIVE ONE: 22 known examples of John Wilkes make a comparison from, according to the literature on que techniques. The probative value of such identification is as the opposition.	stioned document examination
ALTERNATIVE TWO: The number of samples for a proba 22, in the neighborhood of 100 or more samples. Any identi subject to doubt and low probative value.	ative identification must be higher than ification made on so few specimens is
QUESTION THREE: TOTAL POINTS: 16	Your Score:
A. What objection or objections will defense counswer?	UNSEL MAKE TO THE QUESTION AND
4 Points	Your Score:
1. Irrelevant. 2 Points	Your Score:
The fact that Dugan was arrested for a stolen property case except the bad character of the accused and is inadmiss	
2. Probative Value exceeded by Prejudice . 2 Points	Your Score:
If relevant, the evidence that Dugan was arrested, not case and is a personal attack on his good character when Dugood character. The probative value of this question & ans	ugan made no issue out of his general

B. WHAT RESPONSE WILL PLAINTIFF'S COUNSEL MAKE? 4 Points	Your Score:
1. Irrelevant. 2 Points	Your Score:
Any act that reflects discreditably on Dugan's credibility is related credibility. Receiving stolen property is an act of dishonesty. There stolen cannon in 1997 is probative of his lack of honesty. It is proper examination about the act of dishonesty. Rule 608(b) Fed.R. Evid.	efore. Dugan's possession of a
2. Probative Value exceeded by Prejudice. 2 Points	Your Score:
The probative value of the 1997 stolen cannon incident on Dugsignificant. The jury should know that Dugan engages in acts of de to Dugan accruing from the underlying facts behind his arrest for poit does not greatly exceed the probative value of the event on the is Fed. R. Evid.	ceit. There is some prejudice ossessing stolen property, but
<ul><li>C. How should the judge rule and why?</li><li>8 Points</li></ul>	Your Score:
ALTERNATIVE ONE:	
1. Relevance. 4 Points	Your Score:
An arrest for receiving stolen property has no impact on the crequestion was rephrased e.g., Isn't it true that in 1997, you knowing from a grave yard in Pennsylvania?" the answer would have been recredibility under R. 608(b). As currently phrased, the question is in	ly possessed a cannon stolen levant to the witness'
2. Probative Value vs. Prejudice. 4 Points	Your Score:
Since the question elicited irrelevant information that proved nothin probative value is nil and great prejudice accrued to the defendant ushould be excluded and the jury instructed to disregard the same.	•
ALTERNATIVE TWO:	
1. Relevance. 4 Points	Your Score:

The underlying facts of Dugan's arrest for receiving stolen property are relevant to his credibility. See Rule 608(b) The question was preliminary and the answer related by counsel could have led to competent information on the underlying receipt of stolen property. That would

adversely affect the credibility of Dugan.	
2. Probative Value vs. Prejudice . 4 Points	Your Score:
The question elicited irrelevant information that sho directly affected his credibility as a witness. It had substream exceeded any prejudice to the defendant.	wed Dugan had committed an act that antial probative value that equalled or
QUESTION FOUR: TOTAL POINTS: 18	Your Score:
A. WHAT OBJECTION OR OBJECTIONS WILL DEFENSE (	COUNSEL MAKE TO THE QUESTION AND
Total Points: 4	Your Score:
1. Hearsay. 2 Points	Your Score:
The complaint introduced by way of cross-examination for the truth of the matter contained. It is hearsay and shape the complaint introduced by way of cross-examination and the cross-exa	
2. Probative Value v. Prejudice. 2 Points	Your Score:
The probative value of some formal allegation in a partial J.W. Booth letter is not genuine is de minimus. The prejuint roduction of pleadings in another case exceeds any pro-	udice to defendant arising from
B. What response will plaintiff's counsel mak	Е?
Total Points: 6	Your Score:
1. Hearsay. 2 Points	Your Score:
The complaint is verified by defendant according to the truth of the matter alleged, and it is his admission. See	
2. Probative Value v. Prejudice. 4 Points	Your Score:

Since defendant admits that the J.W. Booth letter is not genuine in the pleading, it has great probative value. The fact that counsel does not offer the entire pleading into evidence decreases any unfair prejudice to the defendant. The unfair prejudice to defendant arising from introduction of pleadings in another case does not exceed the probative value the pleading has as an admission

C. HOW SHOULD THE JUDGE RULE AND WHY?	
Total Points: 8	Your Score:
1. Hearsay. 4 Points	Your Score:
Although hagragy at common law, a placeding t	ilad in another count that contains all section

Although hearsay at common law, a pleading filed in another court that contains allegations contrary to the legal position of the defendant in this suit is an admission and classified as a hearsay exclusion. R. 801(d)(2)(A). It is admissible unless its probative value is exceeded by prejudice.

2. Probative Value v. Prejudice. 4 Points

Your Score:	Your	Score:	
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The probative value of some formal allegation in a pleading on the issue of whether or not the J.W. Booth letter is not genuine is de minimus. The prejudice to defendant arising from introduction of pleadings in another case exceeds any probative value the pleading may have.